

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the matter of

**City Signal Communications, Inc.
19668 Progress Drive
Strongsville, Oh 44136**

Petitioner,

v.

**City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118**

Defendant.

File No. :

**Place on Accelerated
Docket**

**Cable Services Bureau
OCT 18 2000**

**Received
CS 00-253**

Petition for Declaratory Ruling

To: The Commission.

The petitioner shows that:

1. City Signal Communications, Inc. (City Signal) is a telecommunications company (CLEC) under the laws and regulations of the State of Ohio.
2. Since certification as a telecommunications provider by the Public Utilities Commission of Ohio, City Signal has secured appropriate utility pole permits and rights of way authorization, and is in the process of installing its fiber optic network through various municipalities in Northeast Ohio.
3. The City of Cleveland Heights is an Ohio municipality.

4. The City of Cleveland Heights has refused to grant City Signal Communications authorization to use the public right of way to string aerial fiber optic cable for telecommunications purposes on existing utility poles. Affidavit Attached.

5. During discussions with the City of Cleveland Heights to obtain rights of way authorization, the Law Director for the Cleveland Heights, John Gibbon, has stated that a right of way authorization would not be granted unless City Signal Communications agreed to put its fiber underground.

6. Other telecommunications providers have fiber on utility poles throughout the City of Cleveland Heights.

7. The denial of a permit to string fiber optic cable (that is, to put fiber optic cable on utility poles and not underground) for telecommunications purposes has the effect of denying telecommunications services to the residents and business subscribers in the City of Cleveland Heights and surrounding areas. Refusal by the City of Cleveland Heights to grant City Signal Communications an aerial permit increases the cost of its telecommunications facilities, which would make City Signal's service non-competitive.

8. On June 30, 2000 City Signal Communications sent the City of Cleveland Heights a construction application to string aerial fiber. Pursuant to Ohio Law, the City of Cleveland Heights had thirty (30) days in which to respond. The City of Cleveland Heights has ignored City Signal's construction application.

9. Such action by the City of Cleveland Heights is in violation of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), Telecommunications Act of 1996, 47 U.S.C. 151, et seq.

10. The Act expressly and directly addresses local government regulation of telecommunications company use of the right-of-way.

11. Section 253 of the Act (47 USC § 253) provides: “No ...local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Ohio law is consistent with the Act.

12. The delaying tactics employed by the City of Cleveland Heights is tantamount to a denial of City Signal Communications’ construction application, and has the effect of prohibiting City Signal from providing interstate or intrastate telecommunications service.

13. Ohio House Bill 283, passed in late 1999 and codified at Chapter 4939 of the Ohio Revised Code, generally spells out the scope of a municipality’s authority to regulate utility service provider and cable operator use of the right-of-way.

14. Among other things, House Bill 283 provides: That utility service providers, such as natural gas, telephone and electric companies or cable operators have the right to construct, repair, position, maintain, or operate lines, poles, pipes, conduits, ducts, equipment, and related appurtenances and facilities along, across, over, upon, and under any public way in the state.

15. That utility service providers and/or cable operators may be required to obtain the consent of political subdivisions for construction, as opposed to operation, maintenance and repair of existing facilities, of lines, poles, pipes, conduits, ducts, equipment, and related appurtenances and facilities along, across, upon, and under any public way owned by a political subdivision.

16. The City of Cleveland Heights, as a political subdivision of the state, may not engage in delaying tactics that are tantamount to a denial of City Signal Communications’ right or privilege of using or occupying a public right of way for

purposes of “delivering ...telecommunications...service.” To require City Signal Communications to put its fiber underground (while other telecom providers have aerial fiber) increases City Signal’s costs and makes its services non-competitive, contrary to the Act.

17. The City of Cleveland Heights’ delay is in violation of the Orders of this Commission’s mandate to introduce competition into the local telecommunications markets to make competitive alternatives available to subscribers. FCC99-141, CC Docket No. 96-98 (WT Docket No. 99-217), released June 7, 1999. See also, TCI Cablevision of Oakland County, Inc., CSR-4790, released September 19, 1997

Wherefore, petitioner asks that the FCC preempt the enforcement of any pronouncement, rule, regulation, or ordinance by the City of Cleveland Heights that prohibits, or may have the effect of prohibiting, the ability of City Signal Communications from providing interstate or intrastate telecommunications service, and order that a permit be granted to construct fiber optic aerial facilities in the City of Cleveland Heights.

October 13, 2002

Date

Nathaniel Hawthorne

Name

Nathaniel Hawthorne, Attorney
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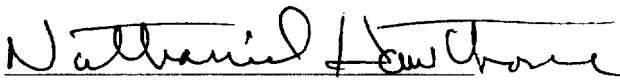
A copy of this petition was served upon:

City Manager
City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118

and

John Gibbon
Law Director
City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118

by regular US Mail, this 13th day of October 2000.

A handwritten signature in cursive script, appearing to read "Nathaniel Hawthorne", written over a horizontal line.

Name

Affidavit

State of Ohio)
) ss.
)
Cuyahoga County

I, Martin Jarrett, being first duly sworn, depose and say the

Following is true:

1. I have had numerous discussions with John Gibbon, Law Director, Cleveland Heights, and other contacts/ meetings and conversations took place with City of Cleveland Heights officials. These contacts, conversations, meetings took place as stated in the attachment.
2. City Signal Communications has been attempting since July 1999 to reach an agreement with Cleveland Heights, all to no avail.
3. It is my opinion that the City of Cleveland Heights has engaged in delaying tactics.

Further affiant sayeth naught.


Martin Jarrett

Sworn to and subscribed before me this 10th day of October, 2000.


Nathaniel Hawthorne
Notary Public

My Commission Expires: No Expiration date

NATHANIEL HAWTHORNE, Notary At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

City Signal Communications
File Summary – Cleveland Area

October 4, 2000 (most recent staff review 9-11-00)

*** Cities with Issues Requiring Special Attention**

Cleveland Heights

| NAME OF COMMUNITY | STATUS | CONTACT INFORMATION |
|--------------------|--|--|
| | | |
| | • | |
| | • | |
| Cleveland Heights* | <ul style="list-style-type: none"> • 7-22-99 Introductory letter sent • 9-30-99 Right-of-Way requirements, ordinance sent. • 3-7 meeting with Carl Czaga, Capital Projects • 3-8 follow up letter sent to John Gibbon – asked for clarification: is Security Fund specified in ordinance required if the Construction and Completion Bond is provided? • Security Fund waived – per Charlie’s call w/Czaga • 3-31 Charlie, Sandy talked with Gibbon – awaiting response. • 4-20 message for Gibbon (determine next step to obtain permit) • 4-27 call with Gibbon – legislation will soon be prepared – letter with Nate’s memo prepared and sent 4-27. MJ to call Gibbon Friday, May 5th who will have met with City Manager. • 5-5 call w/Gibbon – current ordinance was never adopted – 5-8 there will be a draft ordinance to be reviewed – to be mentioned to Council 5-8 and hopefully referred to committee. He is aware of time constraints – if we file request now – City will deny CS and all others – if Council process gets bogged down, they’ll consider Cleveland approach – call gibbon Tuesday morning May 9 to discuss Council’s response at 216-291-3810. • 5-9 message for Gibbon – just left for vacation till 18th. • 5-10 message for Czaga • 5-11 Czaga called back – Council will have 1st reading of new ordinance 5-18 – he will send me copy – we will talk next week regarding schedule – when adopted, he will be in position to issue permit – 30 day issue was discussed. • 5-18 call with Gibbon – ordinance not introduced yet—anticipate intro at 6-5 Council meeting. Call Gibbon 5-22 regarding status • 5-23 message for Gibbon • 5-24 call with Gibbon – ordinance to be introduced 6-5, potential adoption 6-19; Martin to call Gibbon 6-6 – Gibbon to send ordinance after intro. • 6-6 messages for Gibbon • 6-7 call with Gibbon – legislation not yet introduced – will be put in packet Friday – discussed by Municipal Services committee Monday June 12 – Council meets every Monday at 5:45 thru summer – may be fee provisions beyond Ohio law – may suspend enforcement of fee provision pending Dublin case that may throw out State provisions. Should be introduced as legislation on 19th. Will send copy of ordinance by June 12th. • <i>Awaiting new ordinance adoption, pole licenses & make ready</i> | <p>Car Czaga Asst. City Manager (216) 291-2555</p> <p>John Gibbon Law Director (216) 291-5775</p> <p>Private Firm – (216) 781-1212</p> |

- 6-15 message for Gibbon – ordinance not received
- 6-15 Laurie Wagner, assist law director – proposed legislation will be mailed today and into Monday 6-19 at Council – call back 216-291-3811 – will set up meetings to discuss legislation.
- 6-20 spoke with Laurie – I have not yet received copy – she will check and also call back with possible meeting dates.
- 6-21 call w/Laurie Wagner – tentative meeting with telecommunications companies for June 27 at 2:00 to review draft ordinance (received by MJ 6-21)
- 6-27 meeting with city and telecommunications companies – general opposition to ordinance – written comments by 7-11. Subsequent meeting with Gibbon – he confirmed that CS will not be required to go underground – Martin indicated that waiting for ordinance passage has effect of a moratorium – we will submit 30-day application and indicate willingness to abide by new ordinance if/when adopted – separate letter from ordinance comments. Gibbon would like to see where city is by 7-11 regarding timing.
- **6-28 official application letter sent to CS – mailed 6-30.**
- **7-3 letter with ordinance comments mailed**
- 7-24 message for Gibbon
- 7-25 missed message from Gibbon – wants to start working w/CS – will meet w/Czaga to see if all material has been provided – will call Martin back later today. Subsequent call w/Gibbon – moving in direction of approving CS prior to new ordinance – still needs to meet w/Czaga. Gibbon call w/Park-suggested UG.
- 7-26 message for Gibbon
- 7-31 received 30-day letter early July – feels 30-day period over mid week – will meet w/council this evening – Martin to call tomorrow after 10:30 – may require UG on some streets – will fax WorldCom's agreement which can be used – new ordinance bogged down.
- 8-1 call w/Gibbon – tentative meeting 8-22 – Nate to call Gibbon prior to Gibbon 2-week vacation.
- 8-7 letter mailed – confirming 8-22 mtg.
- 8-11 message for City Manager Downing
- 8-18 left message to confirm meeting
- 8-22 meeting with Gibbon, Czaga, Nate, Charlie, Bill, Martin – want comprehensive ordinance in September; CS to price conduit along Lee; Gibbon to provide conduit leasing \$ along Mayfield. Cedar is being paved – may not want to open it up; city wants conduit on Taylor. City did not know ICG was aerial along route. City may waive fees for CS if it provides conduit.
- Charlie pursuing feasibility of joint build along part of route.
- 10-4 call w/Gibbon – no agreement or pricing yet from Metromedia – expected within 1-2 weeks.
- 10-4 e-mail to Nate: file FCC